1999 DRAFTING REQUEST

Bill

Received: **09/9/98**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Rodney Moen (608) 266-8546**

By/Representing: **Melissa**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Assault by prisoners

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	olsenje 01/15/99	jgeller 01/16/99	jfrantze 01/19/99	_____ _____	lrb_docadmin 01/19/99		
/2	olsenje 02/19/99	jgeller 02/22/99	jfrantze 02/22/99	_____ _____	lrb_docadmin 02/22/99	lrb_docadmin 02/22/99	S&L

FE Sent For: 04-07-99

<END>

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/1	olsenje 01/15/99	jgeller 01/16/99	jfrantze 01/19/99	_____ _____	lrb_docadmin 01/19/99		

FE Sent For:

<END>

Jacket "1/2" for Senate

JED

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Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	olsenje	1 1/16 jlg	1/16/19	1/16/19 pgf 1/19			

FE Sent For:

<END>

0109

AN ACT TO PROHIBIT ACTS BY INMATES OF JAILS OR CORRECTIONAL INSTITUTIONS WHICH RESULT IN CONTACT WITH CERTAIN BODILY FLUIDS OR SECRETIONS OR THE CASTING OR EXPELLING OF CERTAIN BODILY FLUIDS OR SECRETIONS ON JAIL AND CORRECTIONAL EMPLOYEES AND PROVIDING PENALTIES.

946.43 Assaults by prisoners.

(3) Bodily fluids or secretions. Any prisoner confined to a state prison or other state, county or municipal detention facility, or person committed to the custody or supervision of the department of corrections or a county department under s.46.215, 46.22 or 46.23 who intentionally commits any of the following acts commits a class "C" felony.

D. Note: deleted not consistent w/ any testimony heard in request

C felony; sentence must be consecutive

need this one don't have warrant

(a) An assault upon an employee of the state, county or municipal detention facility, a visitor, or another inmate of such facility which results in contact with blood, seminal fluid, urine or feces without the person's consent.

(b) An act which is intended to cause pain or injury or be insulting or offensive and which results in blood, seminal fluid, urine or feces being cast or expelled upon an employee of the state, county or municipal detention facility, visitor, or another inmate of such facility without the person's consent.

HOUSE FILE 542

AN ACT

TO PROHIBIT ACTS BY INMATES OF JAILS OR CORRECTIONAL INSTITUTIONS WHICH RESULT IN CONTACT WITH CERTAIN BODILY FLUIDS OR SECRETIONS OR THE CASTING OR EXPELLING OF CERTAIN BODILY FLUIDS OR SECRETIONS ON JAIL AND CORRECTIONAL EMPLOYEES, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 708.3B INMATE ASSAULTS -- BODILY FLUIDS OR SECRETIONS.

A person who, while confined in a jail or in an institution or facility under the control of the department of corrections, commits any of the following acts commits a class "D" felony:

1. An assault, as defined under section 708.1, upon an employee of the jail or institution or facility under the control of the department of corrections, which results in the employee's contact with blood, seminal fluid, urine, or feces.

2. An act which is intended to cause pain or injury or be insulting or offensive and which results in blood, seminal fluid, urine, or feces being cast or expelled upon an employee

of the jail or institution or facility under the control of the department of corrections.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 542, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved _____, 1997

TERRY E. BRANSTAD
Governor

Iowa General Assembly

708.1 Assault defined.

A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

3. Intentionally points any ~~firearm~~ toward another, or displays in a threatening manner any dangerous weapon toward another.

Provided, that where the person doing any of the above enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace, the act shall not be an assault.

Provided, that where the person doing any of the above enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle, or other disruptive situation, that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function regardless of the location, the act shall not be an assault, whether the fight or physical struggle or other disruptive situation is between students or other individuals, if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled.

Section History: Early form

[C51, § 2594, 2597; R60, § 4217, 4220; C73, § 3875, 3878, 3879; C97, § 4771, 4774, 4775; S13, § 4771; C24, 27, 31, 35, 39, § **12929, 12930, 12934;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 694.**1**, 694.2, 694.6; C79, 81, § **708.1**]

Section History: Recent form

95 Acts, ch 191, § 49

Internal References

Referred to in § 236.2, 282.4, 707.2, **708**.2, **708**.2A, **708**.2C, **708**.3, **708**.3A, 709.11, 719.**1**, 724.8, 724.15, 907.3

Iowa General Assembly

708.3 Assault while participating in a felony.

Any person who commits an assault as defined in section **708**.1 while participating in a felony other than a sexual abuse is guilty of a class "C" felony if the person thereby causes serious injury to any person; if no serious injury results, the person is guilty of a class "D" felony.

Section History: Early form

[C51, § 2592, 2593, 2595; R60, § 4215, 4216, 4218; C73, § 3873, 3874, 3876; C97, § 4769, 4770, 4772; C24, 27, 31, 35, 39, § **12933, 12935, 12968;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 694.5, 694.7, 698.4; C79, 81, § **708**.3; 81 Acts, ch 204, § 4]

Internal References

Referred to in § 80A.4

Footnotes

Definition of forcible felony, § 702.11

Iowa General Assembly

Search: Iowa Code 1997

Comments? iacode@staff.legis.state.ia.us.

Last update: Mon Jan 27 16:05:08 CST 1997
URL: /IACODE/1997/**708**/3.html
jhf

Iowa General Assembly

708.3A Assaults on peace officers, fire fighters, and health care providers.

1. A person who commits an assault, as defined in section 708.1, against a peace officer, health care provider, or fire fighter, whether paid or volunteer, with the knowledge that the person against whom the assault is committed is a peace officer, health care provider, or fire fighter and with the intent to inflict a serious injury upon the peace officer, health care provider, or fire fighter, is guilty of a class "D" felony.

2. A person who commits an assault, as defined in section 708.1, against a peace officer, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, health care provider, or fire fighter and who uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

3. A person who commits an assault, as defined in section 708.1, against a peace officer, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, health care provider, or fire fighter, and who causes bodily injury or disabling mental illness, is guilty of an aggravated misdemeanor.

4. Any other assault, as defined in section 708.1, committed against a peace officer, health care provider, or fire fighter, whether paid or volunteer, by a person who knows that the person against whom the assault is committed is a peace officer, health care provider, or fire fighter, is a serious misdemeanor.

5. As used in this section, *"health care provider"* means an emergency medical care provider as defined in chapter 147A or a person licensed or registered under chapter 148, 148C, 148D, 150, 150A, or 152 who is providing or who is attempting to provide emergency medical services, as defined in section 147A.1, or who is providing or who is attempting to provide health services as defined in section 135.61 in a hospital. A person who commits an assault under this section against a health care provider in a hospital, or at the scene or during out-of-hospital patient transportation in an ambulance, is presumed to know that the person against whom the assault is committed is a health care provider.

Section History: Recent form

95 Acts, ch 90, §3; 96 Acts, ch 1069, § 1

Iowa General Assembly

Search: Iowa Code 1997

about 20 minutes

It isn't necessary to leave physical boundaries of institution to complete act of "escape". State v. Sugden, 143 W (2d) 728, 422 NW (2d) 624 (1988).

Under Sub. (5) (b), 1985 stats., [now sub. (1) (a)], individual is "in custody" once freedom of movement is restricted; one lawfully arrested may not leave without permission. State v. Adams, 152 W (2d) 68, 447 NW (2d) 90 (Ct. App. 1989).

A person can be "in custody" without being under "legal arrest", but a person cannot be under "legal arrest" without being "in custody". State v. Hoffman, 163 W (2d) 752, 472 NW (2d) 558 (Ct. App. 1991).

Traffic regulation under (2) (a) does not include any offense punishable as a crime. State v. Beasley, 165 W (2d) 97, 477 NW (2d) 57 (Ct. App. 1991).

Upon conviction of a crime a person is in custody regardless of physical control. Leaving without the court's granting release is escape. State v. Scott, 191 W (2d) 146, 528 NW (2d) 46 (Ct. App. 1995).

As used in sub. (1) (a) "medical care" includes treatment at drug and alcohol rehabilitation centers. State v. Sevelin, 204 W (2d) 127, 554 NW (2d) 521 (Ct. App. 1996).

946.425 Failure to report to jail. (1) Any person who is subject to a series of periods of imprisonment under s. 973.03 (5) (b) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class D felony.

(1m) (a) Any person who receives a stay of execution of a sentence of imprisonment of less than 10 days to a county jail under s. 973.15 (8) (a) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class A misdemeanor.

(b) Any person who receives a stay of execution of a sentence of imprisonment of 10 or more days to a county jail under s. 973.15 (8) (a) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class D felony.

(1r) (a) Any person who is subject to a confinement order under s. 973.09 (4) as the result of a conviction for a misdemeanor and who intentionally fails to report to the county jail or house of correction as required under the order is guilty of a Class A misdemeanor.

(b) Any person who is subject to a confinement order under s. 973.09 (4) as the result of a conviction for a felony and who intentionally fails to report to the county jail or house of correction as required under the order is guilty of a Class D felony.

(2) A court shall impose a sentence under this section consecutive to any sentence previously imposed or that may be imposed for any crime or offense for which the person was sentenced under s. 973.03 (5) (b) or 973.15 (8) (a), consecutive to any sentence that may apply to the person under s. 973.10 (2) or consecutive to any confinement order under s. 973.09 (4) previously issued by a court regarding the person.

(3) A prosecutor may not charge a person with violating both subs. (1) and (1m) regarding the same incident or occurrence.

History: 1989 a. 85; 1993 a. 273; 1995 a. 154.

946.43 Assaults by prisoners. Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally does any of the following is guilty of a Class C felony:

(1) Places an officer, employe, visitor or another inmate of such prison or institution in apprehension of an immediate battery likely to cause death or great bodily harm; or

(2) Confines or restrains an officer, employe, visitor or another inmate of such prison or institution without the person's consent.

History: 1977 c. 173, 273.

946.44 Assisting or permitting escape. (1) Whoever does the following is guilty of a Class D felony:

(a) Any officer or employe of an institution where prisoners are detained who intentionally permits a prisoner in the officer's or employe's custody to escape; or

(b) Whoever with intent to aid any prisoner to escape from custody introduces into the institution where the prisoner is detained or transfers to the prisoner anything adapted or useful in making an escape.

(1g) Any public officer or public employe who violates sub. (1) (a) or (b) is guilty of a Class C felony.

(1m) Whoever intentionally introduces into an institution where prisoners are detained or transfers to a prisoner any firearm, whether loaded or unloaded, or any article used or fashioned in a manner to lead another person to believe it is a firearm, is guilty of a Class C felony.

(2) In this section:

(a) "Custody" has the meaning designated in s. 946.42 (1) (a).

(b) "Escape" has the meaning designated in s. 946.42 (1) (b).

(c) "Institution" includes a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), and a Type 2 child caring institution, as defined in s. 938.02 (19r).

(d) "Prisoner" includes a person who is under the supervision of the department of corrections under s. 938.34 (4h) or placed in a secured correctional facility or secured child caring institution under s. 938.34 (4m) or 938.357 (4) or (5) (e) or placed in a Type 2 child caring institution under s. 938.34 (4d) or who is subject to an order under s. 48.366.

History: 1977 c. 173; 1985 a. 320; 1987 a. 27, 236, 238, 403; 1989 a. 31, 107; 1993 a. 16, 377, 385, 486, 491; 1995 a. 27, 77, 352.

946.45 Negligently allowing escape. (1) Any officer or employe of an institution where prisoners are detained who, through his or her neglect of duty, allows a prisoner in his or her custody to escape is guilty of a Class B misdemeanor.

(2) In this section:

(a) "Custody" has the meaning designated in s. 946.42 (1) (a).

(b) "Escape" has the meaning designated in s. 946.42 (1) (b).

(c) "Institution" includes a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), and a Type 2 child caring institution, as defined in s. 938.02 (19r).

(d) "Prisoner" includes a person who is under the supervision of the department of corrections under s. 938.34 (4h) or placed in a secured correctional facility or secured child caring institution under s. 938.34 (4m) or 938.357 (4) or (5) (e) or placed in a Type 2 child caring institution under s. 938.34 (4d) or who is subject to an order under s. 48.366.

History: 1977 c. 173; 1985 a. 320; 1987 a. 27, 238; 1989 a. 31, 107; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77, 352.

946.46 Encouraging violation of probation or parole. Whoever intentionally aids or encourages a parolee or probationer or any person committed to the custody or supervision of the department of corrections or a county department under s. 46.215, 46.22 or 46.23 by reason of crime or delinquency to abscond or violate a term or condition of parole or probation is guilty of a Class A misdemeanor.

History: 1971 c. 164 s. 89; 1977 c. 173; 1989 a. 31, 107; 1993 a. 385; 1995 a. 27.

946.47 Harboring or aiding felons. (1) Whoever does either of the following is guilty of a Class E felony:

(a) With intent to prevent the apprehension of a felon, harbors or aids him or her; or

(b) With intent to prevent the apprehension, prosecution or conviction of a felon, destroys, alters, hides, or disguises physical evidence or places false evidence.

(2) As used in this section "felon" means either of the following:

(a) A person who commits an act within the jurisdiction of this state which constitutes a felony under the law of this state; or

(b) A person who commits an act within the jurisdiction of another state which is punishable by imprisonment for one year or more in a state prison or penitentiary under the law of that state and would, if committed in this state, constitute a felony under the law of this state.

(3) This section does not apply to the felon or the felon's spouse, parent, grandparent, child, grandchild, brother or sister by consanguinity or affinity of such felon.

History: 1977 c. 173; 1993 a. 486.

provision of any abortion statute with respect to her unborn child or fetus.

History: 1985 a. 56.

940.15 Abortion. (1) In this section, "viability" means that stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case before him or her, there is a reasonable likelihood of sustained survival of the fetus outside the womb, with or without artificial support.

(2) Whoever intentionally performs an abortion after the fetus or unborn child reaches viability, as determined by reasonable medical judgment of the woman's attending physician, is guilty of a Class E felony.

(3) Subsection (2) does not apply if the abortion is necessary to preserve the life or health of the woman, as determined by reasonable medical judgment of the woman's attending physician.

(4) Any abortion performed under sub. (3) after viability of the fetus or unborn child, as determined by reasonable medical judgment of the woman's attending physician, shall be performed in a hospital on an inpatient basis.

(5) Whoever intentionally performs an abortion and who is not a physician is guilty of a Class E felony.

(6) Any physician who intentionally performs an abortion under sub. (3) shall use that method of abortion which, of those he or she knows to be available, is in his or her medical judgment most likely to preserve the life and health of the fetus or unborn child. Nothing in this subsection requires a physician performing an abortion to employ a method of abortion which, in his or her medical judgment based on the particular facts of the case before him or her, would increase the risk to the woman. Any physician violating this subsection is guilty of a Class E felony.

(7) Subsections (2) to (6) and s. 939.05, 939.30 or 939.31 do not apply to a woman who obtains an abortion that is in violation of this section or otherwise violates this section with respect to her unborn child or fetus.

History: 1985 a. 56.

BODILY SECURITY.

940.19 Battery; substantial battery; aggravated battery. (1) Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.

(2) Whoever causes substantial bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class E felony.

(3) Whoever causes substantial bodily harm to another by an act done with intent to cause substantial bodily harm to that person or another is guilty of a Class D felony.

(4) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class D felony.

(5) Whoever causes great bodily harm to another by an act done with intent to cause either substantial bodily harm or great bodily harm to that person or another is guilty of a Class C felony.

(6) Whoever intentionally causes bodily harm to another by conduct that creates a substantial risk of great bodily harm is guilty of a Class D felony. A rebuttable presumption of conduct creating a substantial risk of great bodily harm arises:

(a) If the person harmed is 62 years of age or older; or

(b) If the person harmed has a physical disability, whether congenital or acquired by accident, injury or disease, that is discernible by an ordinary person viewing the physically disabled person, or that is actually known by the actor.

History: 1977 c. 173; 1979 c. 111, 113; 1987 a. 399; 1993 a. 441, 483.

Under "elements only" test, offenses under subsections that require proof of nonconsent are not lesser included offenses of offenses under subsections where proof of nonconsent is not required. State v. Richards, 123 W (2d) 1, 365 NW (2d) 7 (1985).

"Physical disability" under (former) sub. (3) (now sub. (6)) discussed. State v. Crowley, 143 W (2d) 324, 422 NW (2d) 847 (1988).

First–degree reckless injury, s. 940.23 (1), is not a lesser included offense of aggravated battery. State v. Eastman, 185 W (2d) 405, 518 NW (2d) 257 (Ct. App. 1994).

940.20 Battery: special circumstances. (1) BATTERY BY PRISONERS. Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally causes bodily harm to an officer, employe, visitor or another inmate of such prison or institution, without his or her consent, is guilty of a Class D felony.

(1m) BATTERY BY PERSONS SUBJECT TO CERTAIN INJUNCTIONS. (a) Any person who is subject to an injunction under s. 813.12 or a tribal injunction filed under [s. 813.12 (9) (a)] and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class E felony.

NOTE: The bracketed cross–reference does not exist. 1995 Wis. Act 343 created this provision without taking into account the repeal and recreation of s. 813.12 (9) by 1995 Wis. Act 306.

(b) Any person who is subject to an injunction under s. 813.125 and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class E felony.

(2) BATTERY TO LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS. Whoever intentionally causes bodily harm to a law enforcement officer or fire fighter, as those terms are defined in s. 102.475 (8) (b) and (c), acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer or fire fighter, by an act done without the consent of the person so injured, is guilty of a Class D felony.

(2m) BATTERY TO PROBATION AND PAROLE AGENTS AND AFTERCARE AGENTS. (a) In this subsection:

1. "Aftercare agent" means any person authorized by the department of corrections to exercise control over a juvenile on aftercare.

2. "Probation and parole agent" means any person authorized by the department of corrections to exercise control over a probationer or parolee.

(b) Whoever intentionally causes bodily harm to a probation and parole agent or an aftercare agent, acting in an official capacity and the person knows or has reason to know that the victim is a probation and parole agent or an aftercare agent, by an act done without the consent of the person so injured, is guilty of a Class D felony.

(3) BATTERY TO WITNESSES AND JURORS. Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a witness as defined in s. 940.41 (3) or a grand or petit juror, and by reason of the person having attended or testified as a witness or by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class D felony.

(4) BATTERY TO PUBLIC OFFICERS. Whoever intentionally causes bodily harm to a public officer in order to influence the action of such officer or as a result of any action taken within an official capacity, without the consent of the person injured, is guilty of a Class E felony.

(5) BATTERY TO TECHNICAL COLLEGE DISTRICT OR SCHOOL DISTRICT OFFICERS AND EMPLOYES. (a) In this subsection:

1. "School district" has the meaning given in s. 115.01 (3).

2. "Technical college district" means a district established under ch. 38.

(b) Whoever intentionally causes bodily harm to a technical college district or school district officer or employe acting in that capacity, and the person knows or has reason to know that the victim is a technical college district or school district officer or employe, without the consent of the person so injured, is guilty of a Class E felony.

(6) BATTERY TO PUBLIC TRANSIT VEHICLE OPERATOR, DRIVER OR PASSENGER. (a) In this subsection, "public transit vehicle" means any vehicle used for providing transportation service to the general public.

(b) Whoever intentionally causes bodily harm to another under any of the following circumstances is guilty of a Class E felony:

1. The harm occurs while the victim is an operator, a driver or a passenger of, in or on a public transit vehicle.

2. The harm occurs after the offender forces or directs the victim to leave a public transit vehicle.

3. The harm occurs as the offender prevents, or attempts to prevent, the victim from gaining lawful access to a public transit vehicle.

(7) (a) In this subsection:

1e. "Ambulance" has the meaning given in s. 146.50 (1) (a).

1g. "Emergency department" means a room or area in a hospital, as defined in s. 50.33 (2), that is primarily used to provide emergency care, diagnosis or radiological treatment.

2. "Emergency department worker" means any of the following:

a. An employe of a hospital who works in an emergency department.

b. A health care provider, whether or not employed by a hospital, who works in an emergency department.

2g. "Emergency medical technician" has the meaning given in s. 146.50 (1) (e).

2m. "First responder" has the meaning given in s. 146.53 (1) (d).

3. "Health care provider" means any person who is licensed, registered, permitted or certified by the department of health and family services or the department of regulation and licensing to provide health care services in this state.

(b) Whoever intentionally causes bodily harm to an emergency department worker, an emergency medical technician, a first responder or an ambulance driver who is acting in an official capacity and who the person knows or has reason to know is an emergency department worker, an emergency medical technician, a first responder or an ambulance driver, by an act done without the consent of the person so injured, is guilty of a Class D felony.

History: 1977 c. 173; 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4); 1989 a. 336; 1993 a. 54, 164, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 145, 225, 343.

Resisting or obstructing an officer (946.41) is not a lesser-included crime of battery to a peace officer. State v. Zdiarstek, 53 W (2d) 776, 193 NW (2d) 833.

Battery to prospective witness is prohibited by s. 940.206, 1975 stats. [now s. 940.20 (3)]. McLeod v. State, 85 W (2d) 787, 271 NW (2d) 157 (Ct. App. 1978).

County deputy sheriff was not acting in official capacity under s. 940.205, 1975 stats. [now s. 940.20 (2)] when making arrest outside county of employment. State v. Barrett, 96 W (2d) 174, 291 NW (2d) 498 (1980).

See note to 48.34, citing In Interest of C.D.M. 125 W (2d) 170, 370 NW (2d) 287 (Ct. App. 1985).

Prisoner is confined to state prison under (1) when kept under guard at hospital for treatment. State v. Cummings, 153 W (2d) 603, 451 NW (2d) 463 (Ct. App. 1989).

Defendant's commitment to a mental institution upon a finding of not guilty by reason of mental disease or defect rendered him a "prisoner" under sub. (1). State v. Skamfer, 176 W (2d) 304, NW (2d) (Ct. App. 1993).

940.203 Battery or threat to judge. (1) In this section:

(a) "Family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

(b) "Judge" means a supreme court justice, court of appeals judge, circuit court judge, municipal judge, temporary or permanent reserve judge or juvenile, probate, family or other court commissioner.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any judge under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a judge or a member of his or her family.

(b) The judge is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.

(c) There is no consent by the person harmed or threatened.

History: 1993 a. 50, 446.

940.205 Battery or threat to department of revenue employe. (1) In this section, "family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any department of revenue official, employe or agent under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a department of revenue official, employe or agent or a member of his or her family.

(b) The official, employe or agent is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.

(c) There is no consent by the person harmed or threatened.

History: 1985 a. 29; 1993 a. 446.

940.207 Battery or threat to department of commerce or department of workforce development employe. (1) In this section, "family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any department of commerce or department of workforce development official, employe or agent under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a department of commerce or department of workforce development official, employe or agent or a member of his or her family.

(b) The official, employe or agent is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.

(c) There is no consent by the person harmed or threatened.

History: 1993 a. 86, 446; 1995 a. 27 ss. 7227 to 7229, 9116 (5), 9130 (4); 1997 a. 3.

940.21 Mayhem. Whoever, with intent to disable or disfigure another, cuts or mutilates the tongue, eye, ear, nose, lip, limb or other bodily member of another, is guilty of a Class B felony.

History: 1977 c. 173.

Injury by conduct regardless of life (940.23) and endangering safety by conduct regardless of life (941.30) can be lesser included offenses of mayhem. Kirby v. State, 86 W (2d) 292, 272 NW (2d) 113 (Ct. App. 1978).

Failure to instruct jury that great bodily harm is essential element of mayhem was reversible error. Cole v. Young, 817 F (2d) 412 (7th Cir. 1987).

940.22 Sexual exploitation by therapist; duty to report. (1) DEFINITIONS. In this section:

(a) "Department" means the department of regulation and licensing.

(b) "Physician" has the meaning designated in s. 448.01 (5).

(c) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(d) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.

(g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client

New York's Pataki Promises Action on Inmate "Anti-Thrower" Bill

Gov. George Pataki, in his first address before members of AFSCME Council 82, promised action this year on a union-sponsored bill to crack down on inmates who toss bodily fluids on corrections officers.

Speaking at Council 82's annual political action conference on February 28 in Albany, Pataki proposed a new crime, "aggravated assault upon an employee of a correction facility or a parole officer," which would subject the thrower to a Class D felony.

Inmates sentenced under the terms of the legislation would have to serve the time consecutively - after their existing sentence.

In 1995 alone, there were 218 reported incidents of inmates throwing bodily fluids at COs in New York's prison system.

"Inmates, I'm told, call it defecation education," Pataki told the union activists at the Council 82 conference. "I call it a felony, and one that should be punishable by consecutive time."

Pataki's works were greeted with a standing ovation from the assembled union leaders. Eliot Seide, Council 82 administrator, said the union will now work to reconcile differences between the Pataki proposal and a similar bill offered by the Democrats in the Assembly. "This legislation is long overdue," said Seide. "This is the year to get it done."

Seide also pointed out that, once a bill becomes law, the union must carefully monitor its application by district attorneys, since some county prosecutors have been remiss in prosecuting prison crimes to the full extent of the statute. Therefore, prohibitions against plea bargaining will be an important part of the legislative negotiations.

Thumbs

THUMBS UP for the members of Iowa Council 61, who forced the resignation of Sally Halford as head of the state corrections department. Halford was nominated for a second term in March, but the union lobbied strongly against her return to office, saying she had demonstrated poor judgment in day-to-day matters and in crises. "This is one director who needed to move on," says Council 61 Pres. Jan Corderman, who is also an International vice president. "We're anxious to work with a director who shares our concern for public safety and the safety of our officers."

THUMBS DOWN for Maricopa County Attorney Rick Romley, who was accused by the members of AFSCME Local 3190 (Council 97) and their boss, Sheriff Joe Arpaio, of being unfit to represent the sheriff department's employees. According to a March 18 article in *The Arizona Republic*, a two-page letter signed by Local 3190 Pres. Bruce Levitch accused Romley of creating "a cloud of untrust" within the county jail system. Arpaio said Romley had a blatant conflict of interest and abused his client-attorney privilege by publicly criticizing jail detention officers.

THUMBS UP for the Pennsylvania judge who convicted a Camp Hill inmate of aggravated assault and assault by a prisoner on a corrections employee. The inmate — who had stabbed Sgt. Robert L. Smith, a member of AFSCME Local 2495 (Council 13) — was sentenced to a maximum of 8 years. Smith was back on the job within a few days.

THUMBS UP for Ohio's House of Representatives, which passed a bill making it a felony for inmates to throw bodily substances like blood, feces and urine at COs or anyone else. Ohio Civil Service Employees Association (OCSEA)/AFSCME Local 11 Staff Rep. James McElvain testified for the bill, stating: "When an inmate deliberately attempts to have an employee come in contact with bodily substances, it is not just an issue of discomfort. It is, in fact, a potentially life-threatening matter."

Thumbs


THUMBS UP for Wisconsin AFSCME COs, who successfully organized citizens and legislators to prevent the state Department of Corrections from closing over one-fourth of the security towers surrounding the state's maximum security facilities. Closing down the towers would have jeopardized public safety, says Gary Lonzo, president of the Wisconsin State Employees Union and a sergeant at the Green Bay Correctional Institution. Gov. Tommy Thompson's January decision to leave all 44 towers open came after AFSCME members gathered over 8,000 signatures on a petition protesting the proposed closing of 12 towers.


THUMBS UP for New Jersey. The state's April 1996 decision to charge inmates $5 per doctor visit has led to a 60 percent decrease in the number of prisoners seeking medical care, according to a Dec. 2 *New York Times* article. Though groups including the nonprofit National Commission on Correctional Health Care have warned that this could result in outbreaks of TB and other contagious diseases, New Jersey officials report that there have been no serious outbreaks of disease in the prisons since the fees were imposed. New Jersey is one of at least 18 states charging inmates for medical care, according to the *1996 Corrections Yearbook*, up from nine in 1995.


THUMBS DOWN for Pontiac Warden Jerry Gilmore, who gave inmates 45 minutes advance notice of a Dec. 17 shakedown. Sgt. Danny Jarrett, president of AFSCME Local 494 (Council 31) which represents COs at the Illinois maximum security prison, publicly condemned the action, stating: "When you go to do a shakedown like this ... you don't call them up and say 'Fellas, is it OK if we come over in an hour?'"


THUMBS UP for Dale Webber, president of AFSCME Local 2824 (Council 93), who turned up the heat on the Plymouth, Mass., school committee when it considered bringing in prison labor to paint a local elementary school. Though the committee voted against this at its January meeting, Local 2824's fight isn't over. Webber says the local will use grievances and other legal procedures to fight the use of prison labor to do municipal work elsewhere in Plymouth.


THUMBS DOWN for the Virginia Corrections Department, which was warned by its COs in September that staff shortages, high turnover and poor morale in the state's prisons are threatening the safety of officers and the public. One of the reasons conditions stay so bad? Management doesn't listen to the suggestions of the officers, says Nottoway Correctional Center CO Kenny Freitag, who is also vice president of AFSCME Local 3832.


THUMBS UP for Iowa lawmakers, who introduced on Jan. 16 a bill similar to one in New York making it a felony for inmates to throw or expel bodily fluids on prison staff members. The bill looks likely to be passed into law, according to Marcia Nichols, the lobbyist for AFSCME Council 61.


THUMBS UP for the Massachusetts Labor Relations Commission, which ordered Suffolk County to pay over 500 COs at Boston's South Bay House of Correction the money owed them -- plus interest -- for extending their workday without pay. The total: $4.5 million. The COs, members of AFSCME Local 419 (Council 93), filed the unfair labor practice complaint in 1991 and expect checks of $5,000 to $7,000 each. Mike Powers,

president of Local 419 and a CO at South Bay, says the settlement goes to show "if you stick together then the end result is victory."

939.615(7)(c)
(c) If a person is convicted of violating par. (a) for the same conduct that resulted in the person being convicted of another crime, the **sentence** imposed for the violation of par. (a) shall be **consecutive** to any **sentence** imposed for the other crime.

941.296(3)
(3) A court shall impose a **sentence** under this section **consecutive** to any **sentence** previously imposed or that may be imposed for the crime that the person committed while using or possessing the handgun.

946.42(4)(a)
(a) Except as provided in par. (b), a court shall impose a **sentence** under this section **consecutive** to any **sentence** previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she escaped.

946.425(2)
(2) A court shall impose a **sentence** under this section **consecutive** to any **sentence** previously imposed or that may be imposed for any crime or offense for which the person was **sentenced** under s. 973.03 (5) (b) or 973.15 (8) (a), **consecutive** to any **sentence** that may apply to the person under s. 973.10 (2) or **consecutive** to any confinement order under s. 973.09 (4) previously issued by a court regarding the person.

948.605(4)
(4) Consecutive sentence. Notwithstanding s. 973.15 (2) to (4), if a court imposes a term of imprisonment under this section, the court shall impose the **sentence consecutive** to any other **sentence**.

New York State

AGGRAVATED HARASSMENT OF EMPLOYEE BY INMATE—CONTACT WITH BODILY FLUIDS

CHAPTER 92

A. 8389–C

Approved May 21, 1996

Deemed effective June 5, 1996

AN ACT to amend the penal law, the criminal procedure law and the correction law, in relation to establishing the crime of aggravated harassment of an employee by an inmate

The People of the State of New York, represented in Senate and Assembly, do enact as

§ 1. Paragraph (e) of subdivision 3 of section 70.06 of the penal law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(e) For a class E felony, the term must be at least three years and must not exceed four years; provided, however, that where the sentence is for the class E felony offense specified in section 240.32 of this chapter, the maximum term must be at least three years and must not exceed five years.

§ 2. The penal law is amended by adding a new section 240.32 to read as follows:

§ 240.32 Aggravated harassment of an employee by an inmate.

An inmate or respondent is guilty of aggravated harassment of an employee by an inmate when, with intent to harass, annoy, threaten or alarm a person in a facility whom he knows or reasonably should know to be an employee of such facility or of the division of parole or office of mental health, he causes or attempts to cause such employee to come into contact with blood, seminal fluid, urine or feces, by throwing, tossing or expelling such fluid or material.

For purposes of this section, "inmate" means an inmate in a correctional facility, local correctional facility or a hospital, as such term is defined in subdivision two of section four hundred of the correction law. For purposes of this section, "respondent" means a juvenile in a secure facility operated and maintained by the division for youth who is placed with or committed to the division for youth. For purposes of this section, "facility" means a correctional facility or local correctional facility, hospital, as such term is defined in subdivision two of section four hundred of the correction law, or a secure facility operated and maintained by the division for youth.

Aggravated harassment of an employee by an inmate is a class E felony.

§ 3. Subdivision 5 of section 220.10 of the criminal procedure law is amended by adding a new paragraph (h) to read as follows:

(h) Where the indictment charges the class E felony offense of aggravated harassment of an employee by an inmate as defined in section 240.32 of the penal law, then a plea of guilty must include at least a plea of guilty to a class E felony.

§ 4. The opening paragraph of subdivision 2 of section 851 of the correction law, as amended by chapter 60 of the laws of 1994, is amended to read as follows:

"Eligible inmate" means a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, however, that a person under sentence for an offense defined in paragraphs ~~a~~ (a) and ~~b~~ (b) of subdivision one of section 70.02 of the penal law, where such offense involved the use or threatened use of a deadly weapon or dangerous instrument shall not be eligible to participate in a work release program until he or she is eligible for release on parole or who will be eligible for release on parole or conditional release within eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of parole. If an inmate is denied release on parole, such inmate shall not be deemed an eligible inmate until he is within two years of his or her next scheduled appearance before the state parole board. In any case where an inmate is denied release on parole while participating in a temporary release program, the department shall review the status of the inmate to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Further, no person under sentence for aggravated harassment of an employee by an inmate as defined in section 240.32 of the penal law, any homicide offense defined in article one hundred twenty-five of the penal law or of any sex offense defined in article one hundred thirty of the penal law or of section 255.25 of the penal law shall be eligible to participate in a work release program as defined in subdivision three of this section. Notwithstanding the foregoing, no person who is an otherwise eligible inmate who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law or (b) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary

release program without the written approval of the commissioner. The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in carrying out this mandate.

§ 5. This act shall take effect fifteen days after the date on which it shall have become a law, provided, however that the amendments made to paragraph (e) of subdivision 3 of section 70.06 of the penal law by section one of this act shall expire on the same date that subdivision 3 of section 70.06 of the penal law expires pursuant to section 8 of chapter 3 of the laws of 1995 and section four of this act shall expire on the same date that section 42 of chapter 60 of the laws of 1994 expires, as amended.

Inmate Assaults with Body Fluids or Other Hazardous Substances

This Act directs that inmates commit a crime of assault in the second degree if they throw or expel infected body fluids or other hazardous material at prison employees or others who provide prison services. The law directs that inmates who commit such crimes can be tested for communicable diseases and that the test results can be disclosed to their crime victims.

Submitted as:
Colorado
CH 270 (Laws of 1997)
Enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This Act may be cited as "An Act to Impose Penalties on Inmates Who Assault Employees of Detention Facilities Through Contact With Substances That May Cause Injury or Disease."

Section 2. [*Assault in the Second Degree.*]

(1) A person commits the crime of assault in the second degree if:

(a) While lawfully confined in a detention facility within this state, a person with intent to infect, injure, harm, harass, annoy, threaten, or alarm a person in a detention facility whom the actor knows or reasonably should know to be an employee of a detention facility, causes such employee to come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit, or any toxic, caustic, or hazardous material by any means, including but not limited to throwing, tossing, or expelling such fluid or material.

(2) (a) Any adult or juvenile who is bound over for trial for the offense described in subparagraph (1)(a) of this section, subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, any person who is indicted for or is convicted of any such offense, or any person who is determined to have provided blood, seminal fluid, urine, feces, saliva, mucus, or vomit to a person bound over for trial for, indicted for, or convicted of such an offense shall be ordered by the court to submit to a medical test for communicable diseases and to supply blood, feces, urine, saliva, or other bodily fluid required for the test. The results of such test shall be reported to the court or the court's designee, who shall then dis-

close the results to any victim of the offense who requests such disclosure. Review and disclosure of medical test results by the court shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If a person subject to a medical test for communicable diseases pursuant this subparagraph voluntarily submits to a medical test for communicable diseases, the fact of such person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

(b) In addition to any other penalty provided by law, the court may order any person who is convicted of the offense described in subparagraph (1)(a) of this section to meet all or any portion of the financial obligations of medical tests performed on and treatment prescribed for the victim or victims of the offense.

(c) At the time of sentencing, the court may order that an offender described in subparagraph (2)(b) of this section be put on a period of probation for the purpose of paying the testing and treatment costs of the victim or victims; except that the period of probation, when added to any time served, shall not exceed the maximum sentence that can be imposed for the offense.

(3) (a) As used in this Act, "detention facility" means any building, structure, enclosure, vehicle, institution, or place, whether permanent or temporary, fixed or mobile, where persons are or may be lawfully held in custody or confinement under the authority of this state or any political subdivision of this state.

(b) As used in this Act, "employee of a detention facility" includes employees of the [Department of Corrections,] employees of any agency or person operating a detention facility, law enforcement personnel, and any other persons who are present in or in the vicinity of a detention facility and are performing services for a detention facility. "employee of a detention facility" does not include a person lawfully confined in a detention facility.

Section 3. [*Severability.*] [Insert severability clause.]

Section 4. [*Repealer.*] [Insert repealer clause.]

Section 5. [*Effective Date.*] [Insert effective date.]

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–0109/1
JEO:...:...

D-Note

jg

1999 BILL

gen cat

AN ACT ...; **relating to:** prisoners throwing or expelling certain bodily substances at or toward others and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits prisoners of a state prison or other state, county or municipal detention facility from assaulting another prisoner or an officer, employe or visitor of the prison or facility. A prisoner commits an assault in violation of this prohibition if he or she does any of the following: 1) places the officer, employe, visitor or prisoner in apprehension of an immediate battery that is likely to cause death or great bodily harm; or 2) confines or restrains the officer, employe, visitor or prisoner without the person's consent. A prisoner convicted of violating this prohibition may be fined not more than $10,000 or imprisoned for not more than ten years or both, if the offense occurs before December 31, 1999, or may be fined not more than $10,000 or imprisoned for not more than 15 years or both, if the offense occurs on or after December 31, 1999.

Current law also prohibits a prisoner confined to a state prison or other state, county or municipal detention facility from intentionally causing bodily harm to another prisoner or to an officer, employe or visitor of the prison or facility without the consent of the person harmed. A prisoner convicted of violating this prohibition may be fined not more than $10,000 or imprisoned for not more than five years or both, if the offense occurs before December 31, 1999, or may be fined not more than $10,000 or imprisoned for not more than ten years or both, if the offense occurs on or after December 31, 1999.

This bill creates a new prohibition relating to assaults by a prisoner against another prisoner or an officer, employe or visitor of the prison or facility. Under the

bill, a prisoner is prohibited from throwing or expelling blood, semen, urine or feces at or toward an officer, employe, visitor or another prisoner without the person's consent if the prisoner throws or expels the blood, semen, urine or feces with the intent that it come into contact with the officer, employe, visitor or other prisoner and with the intent either to cause bodily harm to the officer, employe, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employe, visitor or other prisoner.

A prisoner who violates the prohibition created in the bill may be fined not more than $10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than $10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999. If a judge imposes a sentence of imprisonment on a prisoner convicted of violating the prohibition created in the bill, the judge must provide that the sentence be served consecutively to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 302.11 (1g) (a) 2. of the statutes is amended to read:

302.11 **(1g)** (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

History: 1977 c. 266, 353; 1979 c. 221; 1981 c. 266; 1983 a. 66, 528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27, 412; 1989 a. 31 ss. 1629, 1630; Stats. s. 302.11; 1989 a. 107; 1991 a. 39; 1993 a. 79, 97, 194, 289, 483; 1995 a. 77, 448; 1997 a. 133, 275, 283, 284, 295, 326.

SECTION 2. 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

939.62 **(2m)** (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

NOTE: NOTE: Subdpar. b. is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:
History: 1977 c. 449; 1989 a. 85; 1993 a. 289, 483, 486; 1995 a. 77, 448; 1997 a. 219, 283, 295, 326; s. 13.93 (2) (c).

SECTION 3. 939.635 (1) of the statutes is amended to read:

939.635 **(1)** Except as provided in sub. (2), if a person who has been adjudicated delinquent is convicted of violating s. 940.20 (1) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), or is convicted of violating s. 940.20 (2m), the court shall sentence the person to not less than 3 years of imprisonment. Except as provided in sub. (2), if a person is convicted of violating s. 946.43 (1m) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), the court shall sentence the person to not less than 5 years of imprisonment.

History: 1993 a. 98; 1995 a. 77, 216.

SECTION 4. 939.635 (2) (b) of the statutes is amended to read:

939.635 **(2)** (b) That imposing the applicable presumptive minimum sentence specified in sub. (1) is not necessary to deter the person or other persons from committing violations of s. 940.20 (1) or 946.43 (1m) or other similar offenses while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), or from committing violations of s. 940.20 (2m).

History: 1993 a. 98; 1995 a. 77, 216.

SECTION 5. 946.43 of the statutes is renumbered 946.43 (1m).

SECTION 6. 946.43 (2m) of the statutes is created to read:

946.43 **(2m)** (a) Any prisoner confined to a state prison or other state, county or municipal detention facility who throws or expels blood, semen, urine or feces at or toward an officer, employe or visitor of the prison or facility or another prisoner

of the prison or facility under all of the following circumstances is guilty of a Class E felony:

1. The prisoner throws or expels the blood, semen, urine or feces with the intent that it come into contact with the officer, employe, visitor or other prisoner.

2. The prisoner throws or expels the blood, semen, urine or feces with the intent either to cause bodily harm to the officer, employe, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employe, visitor or other prisoner.

3. The officer, employe, visitor or other prisoner does not consent to the blood, semen, urine or feces being thrown or expelled at or toward him or her.

(b) A court shall impose a sentence for a violation of par. (a) consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation of par. (a).

SECTION 7. 973.0135 (1) (b) 2. of the statutes is amended to read:

973.0135 **(1)** (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

NOTE: NOTE: Subd. 2. is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:
History: 1993 a. 194, 483; 1995 a. 448; 1997 a. 219, 283, 295; s. 13.93 (2) (c).

SECTION 8. Initial applicability.

(1) This act first applies to offenses committed on the effective date of this subsection.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0109/1dn
JEO:...:...
JG

Melissa:

Please note the following when reviewing this draft:

1. The materials supplied to me as part of the drafting request included suggested language for the new crime that you want to create. However, this draft departs from the suggested language. First, the draft does not refer to an "assault" because we do not have a generic crime of "assault" under Wisconsin law and referring to "assault" will not tell anyone what acts the statutes is meant to prohibit. Second, the draft does not use the passive construction used in the suggested language (e.g., "an act which is intended . . . and which results in blood, etc., being cast or expelled upon . . .") because passive construction is too often ambiguous and even vague, qualities that are especially problematic in statutes defining crimes. (I realize that the suggested language appeared to be based on an Iowa statute, a copy of which was in the materials provided with the drafting request; however, Iowa *does* have a crime of "assault", and even with the definition of that crime in front of you it is difficult to tell what the statute prohibits.)

Thus, instead of using the suggested language, this draft creates a new prohibition based on the descriptions of prisoner conduct that were contained in other materials supplied with the drafting request. You should review the proposed language carefully to determine whether it prohibits the acts that you intend to prohibit. If it does not, let me know what acts you intend to prohibit and the draft can be changed accordingly.

2. The suggested language referred at one point to persons committed to the custody or supervision of DOC or a county department under s. 46.215, 46.22 or 46.23, stats. However, that language covers a vast array of persons who are not prisoners and thus seemed inconsistent with the rest of the suggested language and the apparent intent of your proposal. Thus, this draft does not cover those persons. If you intend to cover those persons in some way, please let me know and the draft can be changed accordingly.

3. As you requested, the draft provides that a person who violates the prohibition created in the draft is guilty of a Class E felony. The sentence for the offense must be consecutive to any other sentence the person was serving or facing at the time of the offense.

Because the new offense is a Class E felony, the draft excludes it from coverage under ss. 302.11 (1g), stats. (restriction on mandatory release on parole for certain crimes),

939.62 (2m), stats. (the so–called "three strikes, you're out" law) and 973.0135, stats. (discretionary restriction on parole eligibility for certain crimes). The draft takes this approach because the offenses covered by those statutes are all classified as more serious crimes (Class A, B, BC and C felonies).

Also, the draft excludes the new offense from the sentencing requirements under s. 939.635 (1), stats., because that requires a minimum sentence of imprisonment that is longer than the maximum provided for under under a Class E felony.

Finally, like the current offense under s. 946.43, stats., the new offense will be included under ss. 48.366 (1) (b), stats. (extended jurisdiction over certain juveniles), 938.183 (1) (a) and (1m) (c) 1. and 2., stats. (original adult court jurisdiction over certain juveniles) and 969.08 (10) (b), stats. (revoking conditions of release for certain serious offenses).

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
266–8906

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0109/1dn
JEO:jlg:jf

January 19, 1999

Melissa:

Please note the following when reviewing this draft:

1. The materials supplied to me as part of the drafting request included suggested language for the new crime that you want to create. However, this draft departs from the suggested language. First, the draft does not refer to an "assault" because we do not have a generic crime of "assault" under Wisconsin law and referring to "assault" will not tell anyone what acts the statutes is meant to prohibit. Second, the draft does not use the passive construction used in the suggested language (e.g., "an act which is intended . . . and which results in blood, etc., being cast or expelled upon . . .") because passive construction is too often ambiguous and even vague, qualities that are especially problematic in statutes defining crimes. (I realize that the suggested language appeared to be based on an Iowa statute, a copy of which was in the materials provided with the drafting request; however, Iowa *does* have a crime of "assault", and even with the definition of that crime in front of you it is difficult to tell what the statute prohibits.)

Thus, instead of using the suggested language, this draft creates a new prohibition based on the descriptions of prisoner conduct that were contained in other materials supplied with the drafting request. You should review the proposed language carefully to determine whether it prohibits the acts that you intend to prohibit. If it does not, let me know what acts you intend to prohibit and the draft can be changed accordingly.

2. The suggested language referred at one point to persons committed to the custody or supervision of DOC or a county department under s. 46.215, 46.22 or 46.23, stats. However, that language covers a vast array of persons who are not prisoners and thus seemed inconsistent with the rest of the suggested language and the apparent intent of your proposal. Thus, this draft does not cover those persons. If you intend to cover those persons in some way, please let me know and the draft can be changed accordingly.

3. As you requested, the draft provides that a person who violates the prohibition created in the draft is guilty of a Class E felony. The sentence for the offense must be consecutive to any other sentence the person was serving or facing at the time of the offense.

Because the new offense is a Class E felony, the draft excludes it from coverage under ss. 302.11 (1g), stats. (restriction on mandatory release on parole for certain crimes),

939.62 (2m), stats. (the so–called "three strikes, you're out" law) and 973.0135, stats. (discretionary restriction on parole eligibility for certain crimes). The draft takes this approach because the offenses covered by those statutes are all classified as more serious crimes (Class A, B, BC and C felonies).

Also, the draft excludes the new offense from the sentencing requirements under s. 939.635 (1), stats., because that requires a minimum sentence of imprisonment that is longer than the maximum provided for under under a Class E felony.

Finally, like the current offense under s. 946.43, stats., the new offense will be included under ss. 48.366 (1) (b), stats. (extended jurisdiction over certain juveniles), 938.183 (1) (a) and (1m) (c) 1. and 2., stats. (original adult court jurisdiction over certain juveniles) and 969.08 (10) (b), stats. (revoking conditions of release for certain serious offenses).

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
266–8906

Olsen, Jefren

From: White, Melissa
Sent: Monday, February 01, 1999 3:57 PM
To: Olsen, Jefren

Hi Jefren,

I just talked to the Local 219 workers who requested the anti-throwing bill. Besides HIV, they want to add other communicable diseases to the list such as TB etc. Is this feasible? I think they signed off on the rest of the bill - hopefully.

Thanks,
Melissa

Olsen, Jefren

From: White, Melissa
Sent: Monday, February 01, 1999 4:11 PM
To: Olsen, Jefren
Subject: FW: Copy of Penn. anit-thrower law

Hello again,

I thought I'd forward this email to you that I received from Local 219 Correctional Officers. It is a copy of the law in Pennsylvania - which includes the language regarding other communicable diseases besides HIV. I think the language you drafted is probably pretty close to this, except it doesn't define it as assault or harrassment, right?

They're pretty anxious for us to introduce this bill, so hopefully they'll be happy with whatever you think is easiest. Let me know what your thoughts are.

Thank you,
Melissa

P.S. They also want to do this as a request bill - AFSCME Local 219 - Jackson Correctional Officers.

-----Original Message-----
From: teclaw@tomah.com [mailto:teclaw@tomah.com]
Sent: Monday, February 01, 1999 11:17 AM
To: White, Melissa
Subject: Copy of Penn. anit-thrower law

PENNSYLVANIA STATUTES

TITLE 18

Chapter 27

§ 2703. Assault by prisoner.

(a) Offense defined. A person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility, located in this Commonwealth, is guilty of a felony of the second degree if he, while so confined or committed or while undergoing transportation to or from such an institution or facility in or to which he was confined or committed intentionally or knowingly commits an assault upon another with a deadly weapon or instrument, or by any means or force likely to produce serious bodily injury. A person is guilty of this offense if he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease, including, but not limited to, human immunodeficiency virus (HIV) or hepatitis B.

(b) Consecutive sentences. The court shall order that any sentence imposed for a violation of section 2702 (a) (relating to aggravated assault) where the victim is a detention facility or correctional facility employee, be served consecutively with the person's current sentence.

§ 2703.1. Aggravated harassment by prisoner.

A person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility located in this Commonwealth commits a felony of the third degree if he, while so confined or committed or while undergoing transportation to or from such an institution or facility in or to which he was confined or committed, intentionally or knowingly causes or attempts to cause another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material.

§ 2704. Assault by life prisoner.

Every person who has been sentenced to death or life imprisonment in any penal institution located in this Commonwealth, and whose sentence has not been commuted, who commits an aggravated assault with a deadly weapon or instrument upon another, or by any means of force likely to produce serious bodily injury, is guilty of a crime, the penalty for which shall be the same as the penalty for murder of the second degree. A person is guilty of this offense if he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease, including, but not limited to, human immunodeficiency virus (HIV) or hepatitis B.

Chapter HSS 145

APPENDIX A
COMMUNICABLE DISEASES

CATEGORY I:

The following diseases are of urgent public health importance and shall be reported by telephone to the local health officer immediately upon identification of a case or suspected case. See s. HSS 145.04 (3) (a).

Anthrax
Botulism
Botulism,infant
Cholera
Diphtheria
Food-borne or water-borne outbreaks
Hepatitis, viral Type A
Measles
Pertussis (whooping cough)
Plague
Poliomyelitis
Rabies (human)
Rubella
Rubella (congenital syndrome)
Tuberculosis
Yellow fever

CATEGORY II:

The following diseases are of less urgent public health importance and shall be reported to the local health officer by individual case report form or by telephone within 72 hours of the identification of a case or suspected case. See s. HSS 145.04 (3) (b).

Acquired Immune Deficiency Syndrome (AIDS)
Amebiasis
Blastomycosis
Brucellosis
Campylobacter enteritis
Encephalitis, viral (specify etiology)
Giardiasis
Hepatitis, viral
  Types B, non-A non-B, or unspecified
Histoplasmosis
Kawasaki disease
Legionnaires' disease
Leprosy
Leptospirosis
Lyme disease
Malaria
Meningitis, aseptic (specify etiology)
Meningitis, bacterial (specify etiology)
Meningococcal disease
Mumps
Nontuberculous mycobacterial disease (specify etiology)
Psittacosis
Q fever
Reye's syndrome
Rheumatic fever (newly diagnosed)
Rocky mountain spotted fever
Salmonellosis
Sexually transmitted diseases
  Chancroid
  Chlamydia trachomatis
  Genital herpes infection (first clinical episode only)
  Gonorrhea
  Granuloma inguinale
  Lymphogranuloma venereum
  Nongonococcal cervicitis
  Nongonococcal urethritis
  Sexually transmitted pelvic inflammatory disease
  Syphilis
Shigellosis
Tetanus
Toxic-shock syndrome
Toxic substance related disease
  Infant methemoglobinemia
  Lead intoxication (specify Pb levels)
  Other metal poisonings
  Other organic chemical poisonings
  Pesticide poisoning
Toxoplasmosis
Trichinosis
Tularemia
Typhoid fever
Typhus fever
Yersiniosis

Suspected outbreaks of other acute or occupationally-related diseases

CATEGORY III:

The following disease shall be reported to the state epidemiologist by individual case report form or by telephone within 72 hours of the identification of a case or suspected case. See s. 252.15 (7) (b), Stats., and s. HSS 145.04 (3) (b).

Human immunodeficiency virus (HIV) infection

CATEGORY IV:

The total numbers of cases or suspected cases of the following communicable disease shall be reported to the local health officer on a weekly basis. See s. HSS 145.04 (3) (c).

Chickenpox

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0109/1
JEO:jlg:jf

Very Soon

redraft maher run (2)

1999 BILL

testing for the presence of communicable diseases in ~~criminal~~ certain criminal defendants and juveniles alleged to be delinquent or in need of protection or services

generate catalogue

AN ACT ...; **relating to:** prisoners throwing or expelling certain bodily substances at or toward others and providing a penalty.

(2)

subsub

Assaults by prisoners

anal. title: sub-sub

Analysis by the Legislative Reference Bureau

Current law prohibits prisoners of a state prison or other state, county or municipal detention facility from assaulting another prisoner or an officer, employe or visitor of the prison or facility. A prisoner commits an assault in violation of this prohibition if he or she does any of the following: 1) places the officer, employe, visitor or prisoner in apprehension of an immediate battery that is likely to cause death or great bodily harm; or 2) confines or restrains the officer, employe, visitor or prisoner without the person's consent. A prisoner convicted of violating this prohibition may be fined not more than $10,000 or imprisoned for not more than ten years or both, if the offense occurs before December 31, 1999, or may be fined not more than $10,000 or imprisoned for not more than 15 years or both, if the offense occurs on or after December 31, 1999.

Current law also prohibits a prisoner confined to a state prison or other state, county or municipal detention facility from intentionally causing bodily harm to another prisoner or to an officer, employe or visitor of the prison or facility without the consent of the person harmed. A prisoner convicted of violating this prohibition may be fined not more than $10,000 or imprisoned for not more than five years or both, if the offense occurs before December 31, 1999, or may be fined not more than $10,000 or imprisoned for not more than ten years or both, if the offense occurs on or after December 31, 1999.

This bill creates a new prohibition relating to assaults by a prisoner against another prisoner or an officer, employe or visitor of the prison or facility. Under the

bill, a prisoner is prohibited from throwing or expelling blood, semen, urine or feces at or toward an officer, employe, visitor or another prisoner without the person's consent if the prisoner throws or expels the blood, semen, urine or feces with the intent that it come into contact with the officer, employe, visitor or other prisoner and with the intent either to cause bodily harm to the officer, employe, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employe, visitor or other prisoner.

A prisoner who violates the prohibition created in the bill may be fined not more than $10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than $10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999. If a judge imposes a sentence of imprisonment on a prisoner convicted of violating the prohibition created in the bill, the judge must provide that the sentence be served consecutively to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation.

ANALYSIS INSERT

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS 2-1

SECTION 1. 302.11 (1g) (a) 2. of the statutes is amended to read:

302.11 **(1g)** (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

INS 2-6

SECTION 2. 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

939.62 **(2m)** (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 3. 939.635 (1) of the statutes is amended to read:

939.635 **(1)** Except as provided in sub. (2), if a person who has been adjudicated delinquent is convicted of violating s. 940.20 (1) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), or is convicted of violating s. 940.20 (2m), the court shall sentence the person to not less than 3 years of imprisonment. Except as provided in sub. (2), if a person is convicted of violating s. 946.43 (1m) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), the court shall sentence the person to not less than 5 years of imprisonment.

SECTION 4. 939.635 (2) (b) of the statutes is amended to read:

939.635 **(2)** (b) That imposing the applicable presumptive minimum sentence specified in sub. (1) is not necessary to deter the person or other persons from committing violations of s. 940.20 (1) or 946.43 (1m) or other similar offenses while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), or from committing violations of s. 940.20 (2m).

SECTION 5. 946.43 of the statutes is renumbered 946.43 (1m).

SECTION 6. 946.43 (2m) of the statutes is created to read:

946.43 **(2m)** (a) Any prisoner confined to a state prison or other state, county or municipal detention facility who throws or expels blood, semen, urine or feces at or toward an officer, employe or visitor of the prison or facility or another prisoner of the prison or facility under all of the following circumstances is guilty of a Class E felony:

1. The prisoner throws or expels the blood, semen, urine or feces with the intent that it come into contact with the officer, employe, visitor or other prisoner.

2. The prisoner throws or expels the blood, semen, urine or feces with the intent either to cause bodily harm to the officer, employe, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employe, visitor or other prisoner.

3. The officer, employe, visitor or other prisoner does not consent to the blood, semen, urine or feces being thrown or expelled at or toward him or her.

(b) A court shall impose a sentence for a violation of par. (a) consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation of par. (a).

SECTION 7. 973.0135 (1) (b) 2. of the statutes is amended to read:

973.0135 **(1)** (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 8. Initial applicability.

(1) This act first applies to offenses committed on the effective date of this subsection.

(END)

1 ***ANALYSIS INSERT:***

Testing for the presence of communicable diseases

Under current law, a person may be required to undergo testing to detect the presence of human immunodeficiency virus (HIV) and sexually transmitted diseases if the person is: 1) an adult charged with or convicted of certain sex offenses; or 2) a child alleged to be delinquent or in need of protection or services because he or she is alleged to have committed certain sex offenses. The sex offenses covered by this requirement are sexual assault of an adult, sexual assault of a child, repeated acts of sexual assault of the same child, sexual exploitation of a child or incest with a child.

Before a person may be required to undergo testing to detect the presence of HIV or a sexually transmitted disease, the prosecutor must apply for an order to have the person tested. A prosecutor must apply for an order if: 1) the victim or, if the victim is a minor, the victim's parent or guardian requests the prosecutor to apply to a court for an order requiring the testing; and 2) the prosecutor has probable cause to believe that the person has significantly exposed the victim to the transmission of HIV or a sexually transmitted disease, except that such probable cause is not required if the person has been convicted or adjudicated delinquent or found in need of protection or services. The court must then hold a hearing to determine whether there is probable cause to believe that the person has significantly exposed the victim to the transmission of HIV or a sexually transmitted disease. The results of any required tests must be disclosed to the following: 1) the person tested; 2) the parent, guardian or legal custodian of the person tested, if the person tested is a minor; 3) the victim or, if the victim is a minor, to the victim's parent or guardian; 4) the health care professional who provides care to the victim, if requested by the victim or the victim's parent or guardian; and 5) the health care provider of the person tested, if the person tested is a minor and disclosure is requested by the minor's parent or guardian.

This bill allows a court to order a person to undergo tests for the presence of communicable diseases if the person is a prisoner who has been charged with, convicted of or found not guilty by reason of mental disease or defect of assaulting another prisoner or an officer, employe or visitor of the prison or facility by throwing or expelling blood, semen, urine or feces at or toward the other prisoner or the officer, employe or visitor. Under the bill, a prosecutor must apply for an order requiring testing of a prisoner charged with this type of assault if: 1) the prosecutor is requested to do so by the victim or, if the victim is a minor, by the victim's parent or guardian; and 2) the prosecutor has probable cause to believe that the assault involved the prisoner's blood, semen, urine or feces and that the assault carried a potential for transmitting a communicable disease to the victim. The court must then hold a hearing to determine whether there is probable cause to believe that the assault involved the prisoner's blood, semen, urine or feces and that the assault carried a potential for transmitting a communicable disease to the victim. If the court finds probable cause, it must then order the prisoner to submit to a test or series

of tests to detect the presence of any communicable disease that was potentially transmitted by the assault.

The results of any required tests for communicable diseases must be disclosed to the following: 1) the prisoner who is tested; 2) the parent, guardian or legal custodian of the prisoner, if the prisoner is a minor; 3) the victim or, if the victim is a minor, to the victim's parent or guardian; 4) the health care professional who provides care to the victim, if requested by the victim or the victim's parent or guardian; and 4) the health care provider of the prisoner who is tested, if the prisoner tested is a minor and disclosure is requested by the prisoner's parent or guardian. The communicable diseases for which tests may be ordered under the bill include HIV, sexually transmitted diseases, hepatitis B and hepatitis C.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

INSERT 2–1:

SECTION 1. 146.81 (4) of the statutes is amended to read:

146.81 **(4)** "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; s. 13.93 (2) (c).

SECTION 2. 252.11 (5m) of the statutes is amended to read:

252.11 **(5m)** A health care professional, as defined in s. 968.38 (1) (a), acting under an order of a court under s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining informed consent to the testing, subject an individual to a test or a series of tests to ascertain whether that individual is infected with a sexually transmitted disease. No sample used for performance of a test under this subsection may disclose the name of the test subject.

History: 1971 c. 42, 125; 1973 c. 90; 1975 c. 6; 1975 c. 383 s. 4; 1975 c. 421; 1981 c. 291; 1991 a. 269; 1993 a. 27 s. 297; Stats. 1993 s. 252.11; 1995 a. 32; 1995 a. 77.

SECTION 3. 252.11 (7) of the statutes is amended to read:

252.11 **(7)** Reports, examinations and inspections and all records concerning sexually transmitted diseases are confidential and not open to public inspection, and shall not be divulged except as may be necessary for the preservation of the public health, in the course of commitment proceedings under sub. (5) or as provided under s. 938.296 (4) or (5) or 968.38 (4) or (5). If a physician has reported a case of sexually transmitted disease to the department under sub. (4), information regarding the presence of the disease and treatment is not privileged when the patient or physician is called upon to testify to the facts before any court of record.

History: 1971 c. 42, 125; 1973 c. 90; 1975 c. 6; 1975 c. 383 s. 4; 1975 c. 421; 1981 c. 291; 1991 a. 269; 1993 a. 27 s. 297; Stats. 1993 s. 252.11; 1993 a. 32; 1995 a. 77.

SECTION 4. 252.15 (2) (a) 6. of the statutes is amended to read:

252.15 **(2)** (a) 6. A health care professional acting under an order of the court under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding sub. (4) (c), the test results may not be made part of the individual's permanent medical record.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188.

SECTION 5. 252.15 (5) (a) 17. of the statutes is amended to read:

252.15 **(5)** (a) 17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 938.296 (4) (e) or (5) (e) or 968.38 (4) (c) or (5) (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a

minor, to the parent or guardian of the alleged victim or victim, under s. 938.296 (4) or (5) or 968.38 (4) or (5).

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188.

INSERT 2–6:

SECTION 6. 901.05 (2) (intro.) of the statutes is amended to read:

901.05 **(2)** (intro.) Except as provided in sub. (3), the results of a test or tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV ~~and the fact that a person has been ordered or required to submit to such a test or tests under s. 938.296 (4) or 968.38 (4)~~ are not admissible during the course of a civil or criminal action or proceeding or an administrative proceeding, as evidence of a person's character or a trait of his or her character for the purpose of proving that he or she acted in conformity with that character on a particular occasion unless the evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless the following procedures are used:

History: 1987 a. 70; 1989 a. 201 ss. 34, 36; 1991 a. 269; 1993 a. 32; 1995 a. 77.

SECTION 7. 901.05 (3) of the statutes is amended to read:

901.05 **(3)** The results of a test or tests under s. 938.296 (4) or (5) or 968.38 (4) or (5) and the fact that a person has been ordered to submit to such a test or tests under s. 938.296 (4) or (5) or 968.38 (4) or (5) are not admissible during the course of a civil or criminal action or proceeding or an administrative proceeding.

History: 1987 a. 70; 1989 a. 201 ss. 34, 36; 1991 a. 269; 1993 a. 32; 1995 a. 77.

SECTION 8. 938.296 (2m) of the statutes is created to read:

938.296 **(2m)** In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 946.43 (2m), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence

of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for the order.

(b) The district attorney or corporation counsel has probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile's blood, semen, urine or feces.

SECTION 9. 938.296 (3) (intro.) of the statutes is amended to read:

938.296 **(3)** (intro.) The district attorney or corporation counsel may apply for an order under sub. (2) or (2m) at any of the following times:

History: 1995 a. 77; 1997 a. 181, 182, 237.

SECTION 10. 938.296 (5) of the statutes is created to read:

938.296 **(5)** On receipt of an application for an order under sub. (2m), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile's blood, semen, urine or feces, the court shall order the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act

of the juvenile. The court shall require the health care professional who performs the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), if applicable, from making the test results part of the juvenile's permanent medical record and to disclose the results of the test to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.

(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the juvenile.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

SECTION 11. 938.296 (6) of the statutes is amended to read:

938.296 **(6)** The court may order the county to pay for the cost of a test or series of tests ordered under sub. (4) or (5). This subsection does not prevent recovery of reasonable contribution toward the cost of that test or series of tests from the parent or guardian of the juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 301.03 (18).

History: 1995 a. 77; 1997 a. 181, 182, 237.

SECTION 12. 938.299 (4) (b) of the statutes is amended to read:

938.299 **(4)** (b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a waiver hearing under s. 938.18, a hearing for a juvenile held in custody under s. 938.21, a hearing under s. 938.296 (4) for a

juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06, a hearing under s. 938.296 (5) for a juvenile who is alleged to have violated s. 946.43 (2m), a dispositional hearing, or any postdispositional hearing under this chapter. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

History: 1995 a. 77, 275, 352; 1997 a. 35, 205, 252, 296; s. 13.93 (2) (c).

SECTION 13. 938.346 (1) (ec) of the statutes is created to read:

938.346 **(1)** (ec) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 946.43 (2m) to submit to a test or a series of tests to detect the presence of communicable diseases and to have the results of that test or series of tests disclosed as provided in s. 938.296 (5) (a) to (e).

History: 1995 a. 77; 1997 a. 181, 205.

SECTION 14. 938.373 (1) of the statutes is amended to read:

938.373 **(1)** The court assigned to exercise jurisdiction under this chapter and ch. 48 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that reasonable cause exists for the services and that the juvenile is within the

jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 48 and, except as provided in s. 938.296 (4) and (5), consents.

History: 1995 a. 77.

INSERT 4–11:

SECTION 15. 950.04 (1v) (d) of the statutes is amended to read:

950.04 **(1v)** (d) To request an order for, and to be given the results of, testing to determine the presence of a ~~sexually transmitted disease or of any strain of human immunodeficiency virus, of antigen or nonantigen products of any strain of human immunodeficiency virus, or of an antibody of any strain of human immunodeficiency virus~~ communicable disease, as provided under ss. 938.296 or 968.38.

History: 1979 c. 219; 1983 a. 102, 364; 1985 a. 311; 1987 a. 332 s. 64; 1989 a. 31; 1997 a. 181, 237, 283.

SECTION 16. 968.38 (2m) of the statutes is created to read:

968.38 **(2m)** In a criminal action under s. 946.43 (2m), the district attorney shall apply to the circuit court for his or her county for an order requiring the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

(a) The district attorney has probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, urine or feces.

(b) The alleged victim or victim who is not a minor or the parent or guardian of the alleged victim or victim who is a minor requests the district attorney to apply for an order.

SECTION 17. 968.38 (3) (intro.) of the statutes is amended to read:

968.38 **(3)** (intro.) The district attorney may apply under sub. (2) or (2m) for an order at any of the following times, and, within those times, shall do so as soon as possible so as to enable the court to provide timely notice:

History: 1991 a. 269; 1993 a. 27, 32, 183, 227, 495; 1995 a. 456; 1997 a. 182.

SECTION 18. 968.38 (5) of the statutes is created to read:

968.38 **(5)** The court shall set a time for a hearing on the matter under sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross–examine witnesses. If the court finds probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, urine or feces, the court shall order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the defendant. The court shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain, notwithstanding s. 252.15 (4) (c), if applicable, from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following:

(a) The alleged victim or victim, if the alleged victim or victim is not a minor.

(b) The parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor.

(c) The health care professional who provides care to the alleged victim or victim, upon request by the alleged victim or victim or, if the alleged victim or victim is a minor, by the parent or guardian of the alleged victim or victim.

SECTION 19. 971.13 (4) of the statutes is amended to read:

971.13 **(4)** The fact that a defendant is not competent to proceed does not preclude a hearing under s. 968.38 (4) or (5) unless the probable cause finding required ~~under s. 968.38 (4)~~ to be made at the hearing cannot be fairly made without the personal participation of the defendant.

History: 1981 c. 367; 1997 a. 182.